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COMMISSION ÉCONOMIQUE
POUR L'EUROPE

ОБЪЕДИНЕННЫЕ НАЦИИ
ЭКОНОМИЧЕСКАЯ КОМИССИЯ
ДЛЯ ЕВРОПЫ

UNITED NATIONS
ECONOMIC COMMISSION
FOR EUROPE

IMPLEMENTATION COMMITTEE

CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

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Dear Mr. Mormul,

7 September 2011

I am writing to you on behalf of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991).

At its twenty-second session, held in Geneva on 5–7 September 2011, the Committee considered the follow-up to decision V/4, regarding Ukraine, taken by the Meeting of the Parties to the Espoo Convention at its fifth session. This decision (paragraph 24) requires the Government of Ukraine to report by the end of each year to the Implementation Committee: (a) on steps taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, implementing the measures in accordance with paragraph 19 of the same decision, and on the post-project analysis of the project; (b) on the implementation of the strategy, in particular on concrete legislative measures adopted to this effect.

The Committee also considered information by the Government of Ukraine, received on 19 July 2011, in response to the Committee's letter of 1 February 2011 and to a first letter of 23 June 2011 (addressed to the First Deputy Prime Minister of Ukraine) requesting clarifications on the recent changes in the Ukrainian legislative framework for the development control/construction activities. The Committee found the information to be insufficient. It stressed that the Government of Ukraine had the responsibility to provide the Committee with the requested information fully and in a timely manner, independently of the internal coordination among the national authorities that this might involve.

The Committee also regretted the lack of any response from the Government of Ukraine to its second letter of 23 June 2011, which was addressed to the national focal point, concerning the strategy for the implementation of the Convention. The Committee emphasized that a change of a national focal point was not a valid reason for not replying to its questions and reminded that Ukraine had the obligation to inform the secretariat without a delay of any such change.

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The Committee requested the Government of Ukraine to ensure that its progress report, prepared as set out in paragraph 24 of decision V/4, would also address fully the Committee's earlier requirements and requests for information and clarifications. These included the following:

1. The revised strategy

- (a) Regarding the dates for the implementation of the strategy, the Government of Ukraine should meet all the deadlines and present all draft laws, decrees etc. (including the Guidance on practical application) to the Committee for its comments before their approval;
- (b) The Committee wished to know which activity, in the new circumstances created by the verdict of the Ukrainian Constitutional Court, would replace the originally scheduled activity which had been deleted;

2. Draft Act on public participation:

The Committee did not understand why the Council of Ministers had competence to adopt a general act on public participation but did not have competence to adopt relevant details regarding environmental protection. In this regard, the Committee wished to receive further clarifications on:

- (a) Whether article 20 of the Ukrainian Environmental protection law had been changed since the adoption of the Strategy;
- (b) Why had the adoption of the decree on public participation not been considered as an obstacle in the original Strategy but was considered as one in present time?
- (c) Whether article 20 of the Environmental protection law precludes adopting procedure for "public participation in assessing the impact of proposed activity on the environment" but does not preclude it from approving the procedure for public participation in assessing the impact in a transboundary context?

3. Screening mechanism and application of the criteria listed in annex I:

The Committee requested further clarifications on the current provisions in Ukraine, including the list of activities subject to an impact assessment, deemed insufficient, and on whether this list was (going to be) extended (i.e. to include activities not requiring construction).

4. Concerning the recent changes in the legislative framework for the development control, namely the Law on Regulating Urban Development adopted on 17 February 2010, which had entered into force on 10 March 2010: This law, according to the information available to the Committee, appears to be not corresponding to the Strategy, but in fact diminishing rather than strengthening the capacity of the legislative framework to ensure compliance with the Convention. The Government of Ukraine is requested to describe the key elements of the new system and an explanation of how it will ensure implementation of the Convention. In particular it should describe:

- (a) What types of activities will require environmental impact assessment (EIA);
- (b) What will be the responsibilities of environmental authorities for conducting the EIA procedure;
- (c) What will be role of other authorities, including health authorities in conducting EIA;
- (d) Who will be responsible for public participation, including: notifying the public, organizing public discussions, providing information;
- (e) Who will be responsible for: preparation of the EIA documentation, verification of the EIA documentation;
- (f) Who will be responsible for identification of potential significant transboundary effects on the environment, how the relevant procedure under the Convention will be triggered and who will run the procedure;
- (g) Who will be responsible for taking into account the results of the EIA procedure as part of the decision-making, including comments from the public and from potentially affected countries;
- (h) What will be the "final decision" and who will take it;

- (i) Who will be responsible for informing the public and potentially affected countries of the final decision;
- (j) Any time limits applicable to the above procedural steps.

In the light of the above, the Committee asked me to invite the Government of Ukraine to provide it with the report as requested by the Meeting of the Parties at its fifth session. This report should be provided **in English no later than by 31 December 2011** and it should cover all the above mentioned questions from the Committee.

Yours sincerely,

Vesna Kolar-Planinsic
Chair, Implementation Committee,
Convention on Environmental Impact Assessment
in a Transboundary Context